



**The Comptroller General
of the United States**

Washington, D.C. 20548

Cunningham

Decision

Matter of: S. Adelman Associates

File: B-234678

Date: July 6, 1989

DIGEST

Proposal to do study (estimated by contracting agency to take 2,000 work hours) significantly more extensive than that reasonably contemplated by request for proposals was reasonably downgraded in the areas of understanding and technical approach and properly rejected as unacceptable and not susceptible of being made acceptable.

DECISION

S. Adelman Associates protests the decision of the Defense Supply Service (DSS), Washington, D.C., to exclude the company's proposal from further consideration for the award of a firm, fixed-price contract under request for proposals (RFP) No. MDA903-89-R-0026, which was issued on November 29, 1988, for a study entitled "Capability of Commercial Manufacturing Facilities to Readily Convert to Defense Production."

We deny the protest in part and dismiss it in part.

The RFP informed offerors that the purpose of the study was to obtain a comprehensive report to identify: (a) the problems of fostering and developing commonality between commercial and defense products; and (b) the processes of determining the capability of commercial manufacturing facilities to readily convert to production of defense products. Offerors were instructed to submit a cost proposal and a technical proposal, consisting of no more than 14 written pages, which would cover: (a) understanding of the problem (worth 200 evaluation points); (b) technical approach (300 points); and (c) personnel assigned (200 points). As to the basis for award, the RFP provided

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that technical superiority would be the most important consideration and that cost (which was not numerically scored) would be secondary. The RFP further estimated the study would take about 2,000 work hours to accomplish.

Twelve firms submitted proposals by the closing date of January 23, 1989. Each of the proposals was evaluated independently under the proposal evaluation scheme by a technical panel, consisting of a chairman and two panel members. Adelman's proposal was rated 10th receiving only 92 points or about 13 percent of the total (700) points available. Significantly contributing to this low rating was DSS' finding that Adelman proposed to perform tasks beyond those contemplated in the scope of work which would entail significantly more than the estimated 2,000 work hours to accomplish. Specifically, DSS found that Adelman's proposal had not recognized the simplicity of the RFP's work statement, and thus demonstrated a lack of understanding and an unrealistic technical approach. Based on this evaluation, and the contracting officer's own review, she determined that Adelman's proposal was technically unacceptable, not reasonably susceptible of being made acceptable, and, consequently, not for further consideration.

Adelman mainly contends that it was unfairly evaluated for "offer[ing] to do too much, when the experience and competence level of [its] proposed personnel clearly indicate that [it] can perform at the level . . . indicated."

The evaluation of proposals and the resulting determination as to whether an offeror is in the competitive range are matters within the discretion of the contracting activity, since it is responsible for defining its needs and for deciding on the best methods of accommodating them. Generally, offers that are unacceptable as submitted and would require major revisions to become acceptable are not for inclusion in the competitive range. Essex Electro Eng'rs, Inc., et al., B-211053.2 et al., Jan. 17, 1984, 84-1 CPD ¶ 74. Further, in reviewing an agency's evaluation, we will not reevaluate the technical proposals, but instead we will examine the agency's evaluation to ensure that the evaluation was reasonable. Syscon Corp., B-208882, Mar. 31, 1983, 83-1 CPD ¶ 335.

Adelman proposed significant work in the areas of current and potential new data bases, cost analyses, procurement policies, legal issues related to mobilization, and mobilization readiness in "NATO Countries." DSS states that these topics are important to mobilization "but have nothing to do with the requirements of the [current] RFP." In fact,

DSS insists that to discuss "all those global issues within a modest research activity of 2,000 hours is not realistic and will lead to a useless result," since "each of these issues would justify a study in itself." DSS concludes that Adelman does not realize the complexities of the work it proposes to perform.

We find the RFP clearly indicated the study was more limited than Adelman's proposed global approach. As indicated above, the report was to identify problems in developing commonality between commercial and defense products and identifying the processes of determining the capability of commercial facilities to convert to defense production. The RFP further informed offers that the study should result from an investigation of 12 specific areas relative to commonality between commercial and defense industries' manufacturing processes and products, process and product taxonomy (classification), and sampling methods. Nowhere in these 12 specific areas, however, was there any indication of a need for: (1) evaluation of data bases; (2) any detailed cost or legal analysis; (3) any analysis of mobilization-related issues stemming from countries allied by treaty with the United States; or (4) analysis of procurement policy.

In reply, Adelman asserts that it can do more than other offerors because it had "already performed much of this effort" and that, had it merely proposed to do only the "basic effort" called for by the RFP, it would have needed to propose only about 1,000 work hours or half the number of hours estimated by the RFP to do the work.

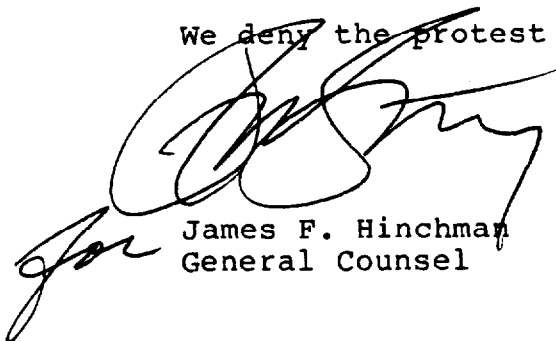
It is implicit in DSS' evaluation, however, that neither the "basic effort" nor any advanced efforts in this area have been successfully accomplished by any concern(s) under contract(s) with the Defense Department. Consequently, Adelman's argument that it has already done, or can easily do, in 1,000 work hours the "basic effort" is a position which simply disagrees with the DSS evaluation. It is well-established that a protester's mere disagreement with the contracting agency's position does not render the evaluation unreasonable. See Gemma Corp., B-222548.3, Feb. 17, 1987, 87-1 CPD ¶ 167. In any case, we find reasonable DSS' view that Adelman's proposal to address the "global issues" in addition to the basic effort would likely lead to a useless result in light of the contemplated purpose of the procurement. Thus, given Adelman's very low point score and relative ranking, we find that Adelman's proposal was properly excluded from the competitive range as it would

require major revisions to make it acceptable in the areas of understanding the problem and technical approach.^{1/}

As to Adelman's allegation that the exclusion of its proposal from the competitive range reflects bias against it as a small business concern, it is well-established that we will not attribute bias to contracting agency employees based on inference or supposition. Seville Mgmt. Corp., B-225845, Mar. 18, 1987, 87-1 CPD ¶ 308. Here, we find no evidence to support this ground of protest as the decision to exclude Adelman's proposal was based on substantive reasons, noted above, rather than on Adelman's status as a small business concern.

Finally, Adelman complains about the page limitation on technical proposal. However, as noted by DSS, not only did none of the other offerors complain of this limitation, but this contention is untimely raised under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988), as it was not raised prior to the closing date for receipt of proposals.

We deny the protest in part and dismiss it in part.



James F. Hinchman
General Counsel

^{1/} Given these major deficiencies, we need not discuss DSS' evaluation of Adelman's proposed consideration of "new flexible manufacturing" technology or DSS' evaluation of Adelman's proposed personnel.